

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5061 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SURESHKUMAR SHANKERBHAI PARMAR

Versus

PANKAJKUMAR

Appearance:

M/S THAKKAR ASSOC. for Petitioner
MR. KC SHAH, A.G.P. for Respondents No.1 to 3
MR SUNIL C PATEL for Respondent No. 4

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 12/09/96

ORAL JUDGEMENT

1. Black-marketing is a social evil. Persons found guilty of economic offences have to be dealt with a firm hand, but when it comes to fundamental rights under the Constitution, this Court, irrespective of enormity and gravity of allegations made against the detenu, has to intervene. It may be seen how this dictum of the Apex Court in Kundanbhai Dulabhai Shaikh v/s. Distt. Magistrate, Ahmedabad & ors., reported in JT 1996 (2) S.C. 532 stands illustrated in the matter in hand.

2. In this petition, under Article 226 of the Constitution of India, the petitioner detenu Sureshkumar Shankerbhai Parmar has brought under challenge the detention order dated 3rd June 1996 passed by respondent No.1 under Section 3(1) read with Section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as "the Act").

3. The grounds of detention placed at Annexure : B in this petition served upon the petitioner along with the impugned order of detention inter alia indicate these allegations of facts :

The Petitioner being the proprietor of Chamunda Petroleum, Dasada, has been carrying on business of distributing Kerosene to the ration card holders under the Public Distribution Scheme of Indian Oil Corporation under the licence granted to the petitioner. Accordingly, necessary allotment of kerosene is being made to the petitioner. The petitioner is expected to maintain the required records Registers and Books of accounts of kerosene allotted to him and the kerosene distributed to the ration card holders. On verifying the allotted quantity of kerosene and released quantity of kerosene it was found that 11 k.ltrs. of kerosene was found to have been less drawn. Upon inquiry having been held in that respect the petitioner had actually drawn 11 k.ltrs. of kerosene stock in the month of December, 1995, but was not taken credit off in the stock register and was directly sold off in the black market and obtained illegal monetary advantage out of such transaction. The grounds set out detailed particulars of the manner in which such stock of kerosene was dealt with by the petitioner. This happened on 27.12.1995 and there was recurrence of such incident on 31.3.1995, 30.9.1995 and 28.2.1996 as per the detailed particulars appearing in the grounds of detention.

It is under the aforesaid circumstances that the petitioner indulged in unlawful activity of obstructing flow of essential commodity in the form of kerosene as stated above. It was, therefore, found necessary to prevent the petitioner from indulging in such activity. Hence the impugned order.

4. The aforesaid order of detention has been challenged by the petitioner on number of grounds, one of the grounds being delay in considering the representation made by the petitioner against the impugned order of detention. It has been submitted on behalf of the

petitioner that the representation was made by the petitioner on 21.6.1996 to the Central Government by Registered A.D.Post. The Central Government was expected to consider the said representation as expeditiously as possible without any undue delay. However, there has in-fact been undue delay in considering the representation and, therefore, the continued detention of the petitioner has become illegal. The necessary ground in respect of delay appears in Para : 3(u) of the petition. The respondents have filed different Affidavit in Reply. However, in the Affidavit in Reply dated 29.8.1996/3.9.96 of Mr.K.V.Jacob, Under Secretary in the Ministry of Civil Supplies, Consumer Affairs and Public Distribution, Shastri Bhavan, New Delhi, following explanation appears against the ground of delay :

"As regards contentions made in Para (o),(q) and (u) it is pointed out that three representations dt.21.6.96, 24.6.96 and 1.7.96 but on the same issue were received along with parawise comments of the State Government in this Ministry on 2.7.96, 3.7.96 and 12.7.96 respectively and the same have been rejected by the Competent Authority in the Ministry, after the due examination of all the relevant records including the representations and parawise comments on the representation by the State Government. The decision of the Central Government was conveyed to Superintendent, Special Jail Junagadh on 24.7.96 by telegram, with direction to convey the same to the detenu. The State Government was also informed simultaneously on the very same day."

On going through the aforesaid explanation it clearly appears that the Central Government has failed to explain the delay between the date and the first receipt of representation and the date of communication of the decision, the said dates being 2.7.96 and 24.7.96. This intervening period of 22 days has not been explained by the Central Government. It is, therefore, clear that Article 22(5) of the Constitution would stand violated. No authority is needed to be referred to in support of this ground of challenge. However, reference has been made to the decision in the case of Kundanbhai Dulabhai Shaikh (Supra) and Rama Dhondu Borade V/s. V.K.Saraf & ors., reported in AIR 1989 SC 1861. In R.D.Borade's case following observations have been read before this Court :

19. The propositions deducible from the various reported decisions of this Court can be stated thus :

20. The detenu has an independent constitutional right to make his representation under Article 22(5) of the Constitution. Correspondingly, there is a constitutional mandate commanding the concerned authority to whom the detenu forwards his representation questioning the correctness of the detention order clamped upon him and requesting for his release to consider the said representation within the reasonable dispatch and to dispose the same as expeditiously as possible. This constitutional requirement must be satisfied with respect but if this constitutional imperative is observed in breach, it would amount to negation of the constitutional obligation rendering the continued detention constitutionally impermissible and illegal, since such a breach would defeat the very concept of liberty - the highly cherished right - which is enshrined in Art. 21 of the Constitution.

21. True, there is no prescribed period either under the provisions of the Constitution or under the concerned detention law within which the representation should be dealt with. The use of the words "as soon as may be" occurring in Art. 22(5) of the Constitution reflect that the representation should be expeditiously considered and disposed of with due promptitude and diligence and with a sense of urgency and without avoidable delay. What is reasonable dispatch depends on the facts and circumstances of each case and no hard and fast rule can be laid down in that regard. However, in case the gap between the receipt of the representation and its consideration by the authority is so unreasonably long and the explanation offered by the authority is so unsatisfactory, such delay could vitiate the order of detention."

5. In my opinion the present case would stand squarely covered by the aforesaid decision of the Apex Court and the petitioner's challenge to the impugned order of detention on the ground of delay would merit acceptance. Hence, the following order is passed :

The continued detention of the petitioner - detenu - Sureshkumar Shankerbhai Parmar is hereby declared as illegal. The petitioner - detenu - Sureshkumar Shankerbhai Parmar is, therefore, directed to

be set at liberty forthwith if he is not required to be detained in any other case. Rule made absolute accordingly.

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